

IN THE COURT OF COMMON PLEAS OF
LUCAS COUNTY, OHIO

EXHIBIT 19

STATE OF OHIO,)
)
PLAINTIFF,) CASE NO. CR06-3339
)
v.)
) JUDGE BARBER
ROBERT WILSON) BY ASSIGNMENT
)
DEFENDANT.)

- - -
BE IT REMEMBERED, that in the sentencing
proceedings of the aforementioned cause on
October 10, 2008, before the Honorable James E.
Barber, in the Lucas County Court of Common
Pleas, the following excerpt proceedings were
held, to-wit:

APPEARANCES:

On behalf of the Plaintiff:
Assistant Lucas County Prosecutor,
Michael Loisel, Esquire

- - -
On behalf of the Defendant, Robert Wilson:
Ronnie L. Wingate, Esquire
Neil S. McElroy, Esquire

- - -
Stacey L. McDevitt, RPR, Official Court Reporter
Lucas County Common Pleas Courthouse,
700 Adams Street, Toledo, Ohio 43624
(419) 213-4477
- - -

1

I N D E X

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(NO EXHIBITS MARKED OR IDENTIFIED.)

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(NO EXAMINATION OF WITNESSES.)

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1 OCTOBER 10, 2008

2 COURTROOM #3

3 9:17 A.M.

4 (WHEREUPON THE FOLLOWING DISCUSSION WAS
5 HELD IN CHAMBERS.)

6 THE COURT: All right. Let the record
7 reflect that we are here in Case Number
8 2006-3339, State of Ohio versus Robert Wilson.
9 We are in chambers just about to proceed to
10 sentencing, however, there are several matters
11 that have been filed and need to be addressed
12 before we can go to sentencing.

13 I note that on September 19, the
14 Defendant did file a motion for acquittal. I
15 don't see -- do you have a motion for a new
16 trial?

17 MR. MCELROY: The motion for new trial
18 is not there. There is a renewed motion to
19 dismiss the indictment, however.

20 THE COURT: Okay. When was that done?

21 MR. MCELROY: That was filed yesterday.

22 THE COURT: I haven't caught up with
23 the file yet. Do you have a copy of that?

1 MR. WINGATE: What did I give him?

2 THE COURT: Renewed motion to dismiss.
3 That's the only motion then pending since the
4 verdict?

5 MR. WINGATE: These two you mean?

6 MR. MCELROY: Those two motions, Judge.

7 THE COURT: The renewed motion and
8 what's the second one?

9 MR. MCELROY: The 29(c).

10 THE COURT: The 29(c) motion, which
11 was filed September 19th. Those are the two
12 motions pending?

13 MR. WINGATE: Right, Your Honor. We
14 would like the Court to allow us to make an oral
15 motion for a new trial with argument, and I've
16 just been informed that it may be 120 days to
17 file the motion for new trial, or is the Court
18 under a different impression?

19 THE COURT: I thought it had to be
20 before the sentencing.

21 MR. WINGATE: All right. We'll make an
22 oral motion then this morning.

23 THE COURT: Let's take them in order

1 here. Well, first of all, should indicate that
2 Defendant is present in court. We're in chambers
3 with his attorneys, Mr. Wingate and McElroy.
4 State is represented by Assistant
5 Prosecutor Loisel. And let's go ahead and take
6 these in order.

7 On the September 19th there was a motion
8 to acquit. Do you want to embellish or enlarge
9 that argument at all?

10 MR. MCELROY: Judge, the 29(c) motion,
11 unlike the Criminal Rule 29 motion that was made
12 during the trial, is not based on merely whether
13 or not the State put on enough evidence, but
14 whether there was sufficient evidence to overcome
15 the presumption of innocence and find the
16 Defendant guilty beyond a reasonable doubt. The
17 Court sat through the trial obviously, as well as
18 those present here today, and there are really --
19 there was one witness that linked Mr. Wilson to
20 Brenda Navarre's murder and that witness was
21 uncertain at where he had received information
22 regarding the murder, whether it was from his
23 mother or from Mr. Wilson.

1 Additionally, I think we'll cover this in
2 the motion for new trial, some of his statements
3 have been called into doubt since the trial with
4 more information that we have, and, moreover, the
5 concern of the Defendant is that the testimony
6 offered by Mrs. Wilson really did not prove that
7 Mr. Wilson did anything, and certainly didn't
8 prove that he did anything beyond a reasonable
9 doubt. And the concern is that the only way that
10 the jury was able to convict Mr. Wilson was by
11 making assumptions about what could have been
12 testified to by Mrs. Wilson. A part of that is
13 evidence by the question from Mr. Montague on the
14 second day of trial, expressing his understanding
15 that a wife cannot testify against a husband, but
16 why didn't the Prosecutor ask certain questions
17 of certain witnesses.

18 So, with those two factors, we would ask
19 that the Court grant Mr. Wilson's motion for
20 acquittal in accordance with Criminal Rule 29(c).

21 THE COURT: Mr. Loisel.

22 MR. LOISEL: Judge, the State did not
23 prepare a written response, however, with respect

1 to a 29(c) motion, the Court has to view the
2 evidence in the light most favorable to the
3 Prosecution. The Court is to determine whether
4 the State of Ohio presented sufficient evidence
5 to each essential element charged in the offense.

6 In this case, as Counsel indicated, this
7 Court had an opportunity to hear the evidence.
8 The State of Ohio clearly submitted sufficient
9 evidence to show that on or about December 1st
10 through December 3rd of 1993 that Robert Wilson
11 purposely caused the death of Brenda Navarre.
12 You heard the testimony from Janet Wilson,
13 Alfonzo Davis, Detective Vasquez,
14 Detective Beavers, Detective Seymour, and others,
15 and they all point to the Defendant. Their
16 testimony all points to this Defendant as the
17 perpetrator of this crime.

18 Obviously there's circumstantial evidence
19 as well as direct evidence. A jury can infer
20 certain facts from the evidence. The direct
21 evidence pointing to this Defendant is the
22 conversation that he had with Alfonzo Davis.
23 Counsel wants this Court to believe that maybe

1 he's confused as to where he heard this
2 information from, whether it was from the
3 Defendant or his mother; however, if the Court
4 remembers, there were three distinct parts of
5 that statement, and only one part of that
6 statement may or may not have come from
7 Janet Wilson, if the Court remembers,
8 Alfonzo Davis testified that the Defendant told
9 him that he had to do what he had to do, that he
10 had to kill the snitch bitch. Those two are
11 unequivocally pointed to the Defendant. The
12 Defense Counsel wants to claim that the third
13 part or third aspect of the statement that he
14 dropped a rock on her head could be attributable
15 to Janet Wilson. Well, it could be, but he
16 indicated initially that it was the Defendant who
17 told him. So, reasonable minds could differ as
18 to who told him the third part, but there was no
19 question as to who told him the first two aspects
20 of that statement.

21 Ultimately the State argues, and I think
22 it is clear that the jury did not lose its way to
23 create a manifest miscarriage of justice. The

1 State would argue that it would be a manifest
2 miscarriage if this Court were to grant this
3 motion. So, with that in mind, we ask that this
4 Court deny Counsels 29(c) motion at this point.

5 THE COURT: Any rebuttal?

6 MR. MCELROY: Judge, Mr. Loisel talks a
7 lot about inferences and I think that's the major
8 concern raised by the motion is that the jury was
9 not permitted to infer what her testimony may
10 have been. Much of the testimony of the
11 detectives merely stated that after talking to
12 Janet Wilson, we pursued Robert Wilson. Yet
13 again, the jury is asked to make more inferences,
14 well, okay, well, what was said to the detectives
15 at that time that made them pursue Robert Wilson.
16 The only evidence the jury was permitted to
17 consider was the testimony brought before the
18 Court, and despite the fact that there was an
19 indictment, and despite the fact that they
20 investigated Mr. Wilson, the testimony offered in
21 this courtroom was insufficient to prove
22 Mr. Wilson's guilt beyond a reasonable doubt, and
23 that's the juncture the Court is at now and the

1 Court is forced to determine. And, frankly, the
2 Court has to consider the credibility of the
3 witnesses, as we are asking the Court to step
4 into the role of trier of fact at this point to
5 determine whether or not there was a sufficient
6 amount of evidence, and, again, I feel like I'm
7 saying it over and over again, but to prove his
8 guilt beyond a reasonable doubt. And it is
9 Mr. Wilson's position that the jury undertook a
10 dangerous -- their undertaking making inferences
11 regarding what her -- Mrs. Wilson's testimony may
12 have been was impermissible and without making
13 those inferences, they were unable to reach a
14 verdict of guilty in this case.

15 MR. LOISEL: If I may though, for the
16 record, you must also consider what Janet Wilson
17 was allowed to testify to and that of all nights
18 that night she was allowed to testify that, in
19 fact, she, in fact, she did pick up Robert
20 Wilson; that he had two bags with him; and that
21 of all nights they stayed the night at Alfonzo
22 Davis's that night, the one time that they ever
23 did.

1 So, the State does not talk -- strike
2 that.

3 An inference can be made with respect to
4 what happened that night due to the fact that she
5 had to go pick up Robert Wilson, just so happened
6 that it was the night that Brenda Navarre was
7 murdered.

8 So, along those lines, this Court has to
9 consider that as well, along with what I already
10 spoke about Alfonzo Davis, Detective Seymour, and
11 the motive, and among other things. So, we would
12 leave it at that, Judge.

13 THE COURT: Well, the Court has great
14 respect for the jury system and the opinions of
15 the jurors in this case. The Court is going to
16 decline the suggestion that I should take over a
17 job as trier of fact. So, I'm going to find that
18 there is no manifest miscarriage of justice at
19 this point in relationship to the presumption of
20 that goes with the verdict. I'm going to
21 overrule the Defendant's motion at this time.
22 The exception is noted. I'm sure this matter
23 will be fully briefed and argued in the Court of

1 Appeals.

2 Next we have the motion -- oral motion
3 for a new trial. Do you want to argue that at
4 this time?

5 MR. WINGATE: Yes, Your Honor. I will
6 indicate for the record that the oral motion for
7 new trial is based upon fully discovered evidence
8 and this, too, shows the interrelatedness of the
9 motion that's been filed on behalf of Mr. Wilson,
10 that being that the State is indicating, and not
11 withstanding the testimony of Mrs. Janet Wilson
12 that the State believes that there was sufficient
13 evidence or credibility to that of Alfonzo
14 Fonseca to establish the guilt beyond a
15 reasonable doubt of Mr. Wilson. However, if I'm
16 not mistaken, it was during the testimony of
17 Mr. Fonseca that he indicated he was unsure,
18 one -- I'm sorry -- Mr. Alfonzo Davis that he did
19 not know the source of the information that had
20 been provided to him, meaning it could have come
21 from his mother or it could have come from
22 Robert. But more specifically he clearly
23 indicated when pressed by the State of Ohio that

1 he received this information in 1995 while riding
2 around in a motor vehicle with Mr. Wilson.

3 We have subsequently obtained information
4 which clearly shows that Mr. Wilson was
5 incarcerated in a penal institution in 1995.
6 Now, the significance of this is that it goes
7 directly to the credibility and believability of
8 Mr. Davis. As such, if there is some question as
9 to the believability and his credibility, then it
10 could more than likely impact upon this jury's
11 verdict or the outcome that was the resulting
12 outcome in this case.

13 So, based upon that we believe that the
14 information that we now have could not have been
15 discovered prior to trial. I will indicate to
16 the Court that I had an opportunity to speak with
17 Mr. Davis, and at that time the only recitation
18 that he gave me was that he was high, he was
19 under the influence of marijuana, he did not know
20 whether -- when he said this he said that he
21 didn't remember anything and that he was biased
22 towards Mr. Wilson, but at no time did he give a
23 specific date, year, month, whenever, as it

1 relates to when this statement was purportedly
2 made by Mr. Wilson.

3 It was only after being pressed on the
4 witness stand by the State of Ohio that the date
5 or the year of 1995 was elicited, and it was
6 subsequent to that time that we were able to find
7 out that Mr. Wilson was, in fact, incarcerated.
8 I believe that this could have impacted or would
9 have impacted the outcome of this case and we
10 believe the Court should now allow a new trial to
11 be had on behalf of Mr. Wilson.

12 THE COURT: Mr. Loisel.

13 MR. LOISEL: Judge, with respect to the
14 information that Mr. Davis presented at trial, I
15 don't have transcript in front of me, but I
16 believe that his testimony was that he does not
17 recall exactly when that statement was made, and
18 Mr. Wingate says, well, it was in 1994, 1995, he
19 said he thought it was 1995 but he wasn't for
20 sure. Any information that Mr. Wingate has
21 garnered from Mr. Davis subsequent is, in fact,
22 irrelevant at this point.

23 He testified to that Mr. Wingate had the

1 information available to him during trial to ask
2 him about when this took place, and I believe he
3 did and tried to pin him down. And if the Court
4 remembers, Mr. Davis said that he wasn't sure
5 when this conversation took place but that it, in
6 fact, did take place. So, I don't believe that
7 there's any merit to this request and we would
8 ask that the Court deny it.

9 MR. WINGATE: Your Honor, the
10 significance of this is that it was not the
11 Defense that elicited a specific time frame. It
12 was the State of Ohio in its zeal to present its
13 case specifically asked of Mr. Davis, did this
14 occur in 1995. We have a rough draft of the
15 transcript of this matter, and there were several
16 references to the year 1995 by the State of Ohio,
17 to which Mr. Davis acquiesced and agreed that it
18 occurred in 1995. That is the only date that we
19 have. Whether or not I asked was it '93, '94,
20 the fact of the matter is the State elicited from
21 him the date of 1995, which we did not have, had
22 no idea as to when it occurred and had no idea
23 until he testified and the State elicited this

1 time frame from him.

2 THE COURT: Well, I'm going to be
3 honest, there's no question that the testimony of
4 Mr. Davis was instrumental in this case, and
5 whether that statement was made in 1995 or some
6 other time, I can't recall all of the testimony
7 with respect to that matter, but I'm sure
8 eventually we're going to have a disposition by
9 the three wise men on this issue at a later time.

10 At this point I'm going to overrule your
11 motion and move on to number three.

12 MR. WINGATE: All right.

13 THE COURT: Which is the motion to
14 dismiss the indictment.

15 MR. WINGATE: Yes, Your Honor. At this
16 juncture we would ask the Court that when this
17 motion was initially filed by the Court, the
18 Court ordered a transcript of the grand jury, and
19 I believe one was actually provided to the Court.
20 The Court had an opportunity to review that
21 transcript and at that time or at the ruling on
22 the motion, the Court indicated that it would
23 deny our motion for one, a transcript, Defense

1 Counsel be provided a copy of the transcript,
2 and, two, the motion to dismiss. Again, I'm only
3 speculating, but it is my understanding that at
4 best, it was Janet Wilson, the wife of the
5 Defendant who testified before the grand jury and
6 the resulting indictment occurred in this case.

7 Now, with that in mind, the Court is
8 aware that the issue presented in this case, one
9 of the chief issues was whether or not spousal
10 privilege applied. The two aspects of it being,
11 one, the competency of Mrs. Wilson to testify,
12 which she elected to testify and made herself
13 competent.

14 The second aspect of it is whether or not
15 Mr. Wilson would exert his spousal privilege
16 relative to acts, communications, and conduct
17 that occurred in the presence of Mrs. Wilson.

18 At the time of trial, Mr. Wilson did
19 exert his spousal privilege, which the Court
20 found well taken, and if I'm not mistaken, the
21 Court in quoting the Court said, "Well, I'll be
22 honest with you, ever since law school, which was
23 back in the middle ages I guess, I always

1 understood that privilege whether it is between
2 penitent husband and wife or whatever dealt with
3 the relationship rather than the conduct. And
4 although I may not be happy about it, I believe
5 that privilege does attach and is applicable in
6 the present case here, so I'm going to allow some
7 questioning of this witness at this time.

8 There is an exception, which is
9 recognized about statements that were made or
10 conduct that occurred in the presence of third
11 parties. You will be allowed to question this
12 witness to establish a basis for third party
13 presence, and the witness will be instructed and
14 hereby is instructed that any testimony she gives
15 with respect to statements made by the Defendant
16 or conduct that she observed by the Defendant
17 must have occurred in the presence of a third
18 party before she will be allowed to testify as to
19 those matters."

20 If the Court will recall, the ruling by
21 the Court that spousal privilege applied resulted
22 in minimal testimony by Mrs. Wilson. The
23 significance of this is at the time that she

1 testified in front of the grand jury, the
2 Prosecutor had unfettered control as to what she
3 said, how she said it, and the extent of it,
4 whether it covered communications, whether it
5 covered acts, whether it covered conduct, all of
6 that was presented. But in this trial, this
7 Court found that the spousal privilege of
8 Mr. Wilson did apply and did not allow this
9 testimony to come in.

10 The reason that we're saying that now
11 that if the Court has decided that it was
12 applicable, the spousal privilege at this point
13 in trial, then it was also applicable at the time
14 she testified in front of the grand jury. And
15 with that, Your Honor, any resulting indictment
16 would be void ab initio. The fact of the matter
17 is we may have proceeded to trial, the jury may
18 have rendered a verdict, but if that verdict, if
19 that trial is premised upon an indictment that is
20 in fact void ab initio, then the Court, Your
21 Honor, has responsibility to correct that
22 manifest injustice.

23 So, at this juncture based upon the

1 Court's ruling in this case that spousal
2 privilege does apply or did apply does apply and
3 would have applied in the grand jury testimony.

4 If I'm not mistaken, the motion that we
5 presented says in citing State v. Baker and in
6 that case, the Court said, and the citation for
7 that is 137 Ohio Appellate 3d 628, 2000 the Court
8 began in its analysis by defining the scope of
9 the spousal privilege. The Court noted that A
10 spouse cannot testify regarding communication
11 made by one to the other, or an act done by
12 either in the presence of the other during
13 coverture. That's the significant thing. It
14 goes on to say, The grand jury may consider
15 incompetent evidence" which would be -- which
16 would be Janet Wilson testifying, but declaring
17 herself to be competent by waiving her right to
18 refuse, but the Baker case goes on to say that
19 The grand jury may consider incompetent evidence
20 but it may not itself violate a valid privilege.
21 The spousal privilege is established by statute
22 and that has, in fact, been violated and for that
23 reason we believe that the Court should, one,

1 find that the indictment was void ab initio and
2 therefore discharge Mr. Wilson at best; two, if
3 the Court will allow us to supplement our claim
4 that inasmuch as we were denied access to the
5 grand jury testimony previously because, one, as
6 the Court is aware, secrecy, the fact of the
7 matter that all of the criteria that establishes
8 the secrecy of the grand jury applied at that
9 point, but in this particular case, we have an
10 indictment, we've had a trial, there's been a
11 subsequent conviction. There is no reason why
12 Defense cannot have an access to a copy of the
13 grand jury testimony.

14 The requirement for the Defense to show
15 in order to have access or to inquire or acquire
16 a copy of the grand jury testimony is that we
17 must show a particularized need.

18 Now, we've established that the reason
19 for denial of the Defense having a copy of that
20 grand jury testimony, all of those reasons are
21 now moot, secrecy, protecting witnesses, ongoing
22 investigation, all of those are inapplicable at
23 this point. Now we're telling the Court that we

1 have a particularized need because we believe
2 that the indictment in this case is void ab
3 initio, and in order to establish that, we need
4 the copy -- a copy of the grand jury testimony in
5 order to establish that.

6 For all of those reasons, we would
7 respectfully ask this Court, one, to make a
8 finding that the indictment was void ab initio,
9 and, second, provide the Defendant with a copy of
10 the grand jury testimony.

11 THE COURT: Mr. Loisel.

12 MR. LOISEL: Judge, this is quite
13 honestly just a rehash of what this Court has
14 already ruled on with respect to the request for
15 the grand jury transcript. The State provided
16 the transcript to this Court. This Court had an
17 opportunity to read that transcript and made a
18 ruling with respect to divulging that transcript
19 to Defense Counsel. There was no particularized
20 need for the transcript to be presented to
21 Defense Counsel. Quite honestly the case law
22 says that as long as an indictment is brought, it
23 cannot solely be brought on information that is

1 privileged.

2 This Court had an opportunity to look at
3 the transcript, and the indictment was not
4 brought solely on privileged information. The
5 Court made a ruling indicating as such and
6 therefore the State would stand on its original
7 response indicating that there is no problem with
8 the indictment and it should not be dismissed.

9 The Court has already ruled in the
10 State's favor on that motion and simply because
11 Janet Wilson was ordered not to testify to
12 certain things during the trial makes no
13 difference, doesn't change what she said at grand
14 jury.

15 The Court had an opportunity to look at
16 that transcript to determine what could or could
17 not or might possibly be privileged and it was
18 clear to the Court then, and it hadn't changed,
19 that the indictment was not based solely on
20 privileged information.

21 So, we're arguing a motion that has
22 already been ruled on, facts and circumstances
23 have not changed. Mr. Wingate wants to argue

1 that because she, in fact, did assert her
2 privilege during trial and was not allowed to
3 testify to various things, that that somehow
4 changes how this Court would look at the
5 indictment and the grand jury testimony. It
6 changes nothing. She testified to what she
7 testified to at grand jury along with others, and
8 a grand jury brought back an indictment.

9 The simple fact that she testified at
10 trial means nothing to this. It is just, as I
11 said, an attempt to resurrect a motion that's
12 already been ruled upon with the applicable case
13 law that's already been cited by the State of
14 Ohio with respect to what is available for grand
15 jury testimony. And we would ask the Court deny
16 this motion, and the State doesn't have a copy of
17 this motion today, but, again, I think it is just
18 a resurrection of the old motion.

19 THE COURT: Refresh my -- does
20 Evidence Rule 101 apply to grand jury testimony,
21 the exceptions or certain hearings that are
22 accepted from evidence rule under 101? Is grand
23 jury proceedings one of those accepted hearings?

1 MR. WINGATE: You mean as it relates
2 to --

3 THE COURT: I mean --

4 MR. WINGATE: -- the use of privilege or
5 non-privilege?

6 THE COURT: Where is my evidence book?

7 MR. LOISEL: Judge, privilege is
8 allowed to be testified to as well as hearsay
9 during grand jury.

10 THE COURT: It's Evidence Rule 101,
11 and there are certain exceptions where the
12 evidence rules do not apply and, I can't remember
13 whether grand jury proceedings are within that.
14 Do you recall? Where is the evidence rule?

15 MS. MERCER: Allison is getting you the
16 book.

17 MR. LOISEL: I believe if the Court
18 has the State's response from the initial motion
19 to dismiss indictment, it is laid out in that
20 response as well, Judge, with respect to the case
21 law that what is allowable at grand jury. And as
22 I said, the privilege testimony is allowable.
23 The indictment simply can't be based solely on

1 privileged information, and it was determined
2 that it was not in this case, and, therefore, the
3 motion should be denied as it was earlier.

4 MR. WINGATE: Your Honor, that
5 recitation flies in the face of Baker because
6 what Baker says is that the grand jury may
7 consider incompetent evidence but it may not
8 itself violate a valid privilege. That privilege
9 that we're talking about is the spousal
10 privilege, which is inherent to Mr. Robert
11 Wilson. Mr. Robert Wilson was not at the Grand
12 Jury, nor was his Counsel to exert his -- or
13 assert his privilege, spousal privilege at that
14 time.

15 The State seems to want to believe that,
16 well, yes, she's testified and nothing has
17 changed, which even -- I'm sorry.

18 THE COURT: All right. I'm looking at
19 Rule 101.4 grand jury proceedings, the Ohio Rules
20 of Evidence do not apply to proceedings before
21 grand juries other than with respect to
22 privileges.

23 MR. LOISEL: Judge that's correct.

1 THE COURT: The privileges that apply
2 to statements between spouses does not apply to
3 the statements that are made in the presence of a
4 third party or third person.

5 MR. WINGATE: And, Your Honor, that's
6 exactly what we're saying. We're saying that
7 this Court, after hearing the arguments relative
8 to whether or not Mrs. Wilson Could testify and
9 with Mr. Robert Wilson exerting -- or asserting
10 his spousal privilege right, this Court declared
11 that she could not testify.

12 I mean, the extent was that the Court
13 said specifically, that I may not be happy about
14 it, I believe that privilege does attach and is
15 applicable in the present case.

16 This is what the Court stated. This is
17 what the Court found and if, in fact, it applied
18 at this trial, then it also would apply back to
19 that proceeding before the grand jury.

20 MR. LOISEL: That's incorrect, Judge.
21 Mr. Wingate can read what the Court said over and
22 over again. The case law states it is not what
23 the Prosecutor suggests. The case law is clear

1 that it says the grand jury can consider
2 privileged information although it cannot base
3 its indictment on privileged information. I
4 don't have a copy of this motion. I can go get
5 my response and read to you verbatim what this
6 case law says if the Court desires.

7 THE COURT: I'm looking at rule 101.4
8 as well here. It states privileged material is
9 exempt from disclosure of grand jurors under
10 Evidence Rule 101(B). What does that mean?

11 MR. LOISEL: Judge, I can get my
12 motion. Mr. Wingate suggests that he should be
13 allowed to go to grand jury.

14 THE COURT: That seems to indicate
15 that privileged materials can be disclosed,
16 that's the way I read that.

17 MR. LOISEL: And that's the way the
18 case law states that it can be. It just solely
19 cannot be based on privileged information, and as
20 the transcript suggests, other individuals
21 testified at grand jury and an indictment was
22 brought.

23 THE COURT: And as I remember, there

1 were a number of investigators who testified or
2 several investigators who testified in the grand
3 jury, so there was some hearsay testimony
4 presented to the grand jury, but under 101, I
5 don't think hearsay is excluded.

6 MR. LOISEL: That's correct.

7 MR. WINGATE: That hearsay is based upon
8 what the spousal privilege -- there's still a
9 problem.

10 MR. LOISEL: No, there isn't. You
11 don't know that the hearsay based upon what
12 Janet Wilson said. I'm not going to divulge what
13 was said at grand jury because you're not allowed
14 to see that. The Court has that under seal.

15 THE COURT: We have that under seal
16 and the higher court is going to certainly have
17 an opportunity to review it.

18 How much time -- what kind of a tail is
19 your client looking at right now? He's currently
20 incarcerated, right? When is his out date?

21 MR. WILSON: 13.

22 MR. WINGATE: 2013.

23 THE COURT: So he's got a couple years

1 anyways. All right. So we've got plenty of time
2 to sort through all this.

3 I'm going to overrule your motion at this
4 point. Are we ready to go?

5 MR. LOISEL: Yes, Judge.

6 MR. MCELROY: Will the grand jury be
7 available for appellate Counsel?

8 THE COURT: Absolutely.

9 MR. LOISEL: Well, Judge, it is under
10 seal at this point.

11 THE COURT: Let me back off on that.
12 The appellate counsel can apply to the Court of
13 Appeals for a release, and I'm not going to speak
14 for the Court of Appeals. All right?

15 (WHEREUPON THE PRECEDING DISCUSSION HELD
16 IN CHAMBERS CONCLUDED AND THE FOLLOWING
17 PROCEEDINGS WERE HELD IN OPEN COURT.)

18 THE COURT: Let the record reflect
19 that we are here in case number CR2006-3339,
20 State of Ohio versus Robert Wilson. We are here
21 today for sentencing. The Defendant is present
22 in court with his attorneys, Mr. Wingate and
23 Mr. McElroy. State is here represented by

1 Assistant Prosecutor Loisel. This matter comes
2 on for sentencing pursuant to a verdict of guilty
3 rendered on September 5 of 2008 of the charge of
4 murder in violation of Revised Code Section
5 2903.02(A) and 2929.02.

6 Mr. Wilson, I would ask you at this time
7 if there's any reason why sentence should not be
8 presented against you.

9 MR. WILSON: No.

10 THE COURT: This will be your
11 opportunity to make any statements that you wish
12 to make to the Court in mitigation, however, the
13 Court is aware that there are -- there is a high
14 degree of probability that this matter may
15 proceed in the Court of Appeals and you may --
16 any statement that you make may have some impact
17 on the appellate process. After discussing this
18 matter with your attorneys, you should and are at
19 this time given an opportunity to make any
20 statements you wish to make.

21 MR. WILSON: Well, the only thing I can
22 say is how the Court has already made its
23 decision and what it desires to do, you've shown

1 your discontent for what you didn't rule in my
2 favor, so I doubt anything I say at this point
3 would change it even though, you know --

4 THE COURT: You're unhappy.

5 MR. WILSON: Not only I'm unhappy, I
6 don't believe according to the Court white man's
7 justice and black man's grief, and we can go on
8 with it.

9 THE COURT: Anything you wish to say,
10 Mr. Wingate, on behalf of Mr. Wilson?

11 MR. WINGATE: The statute basically ties
12 the hands of the Court as far as any imposition
13 of sentence, and based upon that, there's only
14 one sentence the Court can impose, and,
15 therefore, we have nothing to say.

16 THE COURT: All right. Mr. Loisel,
17 are there any witness who is wish to speak or any
18 members of the public that wish to speak before
19 you speak?

20 MR. LOISEL: Judge, a number of family
21 members of the victim are present, and they have
22 previously presented statements to Court, I
23 believe one as late as this morning, and I wanted

1 to make sure that the Court --

2 THE COURT: I have had an opportunity
3 to review those, and I should further indicate
4 that I reviewed the letter that the Defendant
5 sent me as well.

6 MR. LOISEL: The only thing the State
7 would ask at this point, Judge: The Defendant is
8 currently incarcerated on a separate offense
9 until 2013. The State would ask that sentence
10 given in this case be consecutive to his current
11 incarceration and should not be rewarded
12 concurrent time due to the fact that it took 15
13 years to get this case to a jury trial, and so we
14 would just ask that the sentence that the Court
15 is obligated to go forward with today be ordered
16 consecutive to his current incarceration.

17 THE COURT: All right.

18 MR. WINGATE: We would object to that.

19 THE COURT: Objection is noted.

20 Well, this case has been long, and
21 frankly a number of legal thickets and
22 entanglements have been part of this process.
23 This has probably been one of the most complex

1 cases this Court has ever had to preside or be
2 involved in, due to the fact that there are
3 significant legal issues that I'm sure will be
4 going up to a higher Court. I'm going to decline
5 to make any further statement at this time. I'm
6 just going to impose sentence.

7 On this day, the Defendant's sentencing
8 hearing is being held pursuant to Revised Code
9 Section 2929.19. Court Reporter McDevitt is
10 present in court, as is Defendant with his
11 Counsel, Mr. Wingate and Mr. McElroy and the
12 State is here represented by Assistant
13 Prosecutor Loisel. The Defendant has been
14 afforded all rights pursuant to Criminal Rule 32.
15 Court considered the record and oral statements.
16 The Court further does note that there were two
17 presentence reports prepared in this case. One
18 which was prepared back in 2001, and the one most
19 recently appeared just prior to this matter
20 coming on for sentencing. The Court has
21 considered the matters that have been related in
22 both of those reports, as well as the letters of
23 victim impact the Court has received.

1 The Court has considered the principles
2 and purposes of sentencing, as the Court is
3 required to do, in Revised Code Section 2929.11.
4 And the Court has balanced the seriousness and
5 recidivism factors, as the Court is required to
6 do, under section 2929.12.

7 The Court finds that the Defendant has
8 been convicted of the offense of murder in
9 violation of Revised Code Sections 2903.02(A) and
10 2929.02 of the Ohio Revised Code, pre-1996 law.

11 Court makes further finding that
12 Defendant is not amenable and is not eligible for
13 community control. The Court makes further
14 finding that prison is consistent with purposes
15 of section 2929.11.

16 Court makes further finding that
17 Defendant has a significant history that has been
18 revealed in the PSIs in this case, and, as I
19 said, have been revealed during the course of the
20 proceedings in this case. The Defendant has
21 further performed the worst case of offense;
22 therefore, it is the sentence of this Court that
23 the Defendant is sentenced a term of 15 years to

1 life. That will be served consecutive to the
2 sentence he is currently serving for which he has
3 an out date of -- that would be case number
4 CR99--2921. Thank you.

5 The Defendant is not eligible for PRC
6 because that would be post Senate Bill 2,
7 however, Defendant will be eligible for parole
8 after the 15 years is served consecutive, and
9 should advise the Defendant that if, in fact,
10 parole is granted, he will be subject to the
11 parole board for the balance of his life.

12 The Defendant has been given all of his
13 rights to notice under Revised Code Section
14 2929.19(B)(3), and of his appellate rights under
15 2953.08.

16 At this time the Defendant will be
17 ordered conveyed back into the custody of the
18 Ohio Department of Rehabilitation and
19 Corrections. You will be given credit for all
20 days served and all future custody days while
21 awaiting transportation to the appropriate state
22 institution. The Defendant is ordered to pay any
23 restitution and prosecution costs, court

1 appointed counsel fees, and any fees permitted
2 under 2929.18(A)(4).

3 You do have the right to appeal this
4 sentence to a higher Court, Mr. Wilson. Any
5 appeal needs to be exercised within 30 days of
6 the filing of the judgment entry sentence in this
7 matter. Do you understand?

8 MR. WINGATE: Your Honor, he does wish
9 to appeal and ask the Court at this point to
10 appoint Spiros Cocoves to represent him in this
11 matter.

12 THE COURT: I was going to advise if
13 he could not afford to pay for the services of an
14 appellate counsel, the Court would appoint
15 appellate counsel at State's cost. Mr. Cocoves
16 is fine. I have no problems with him. Is there
17 any objection to appointing him to this case?

18 MR. LOISEL: Judge, I would just leave
19 it up to the discretion of the Court.

20 THE COURT: If that's what he wants,
21 that's fine with me. Anything else at this time?

22 MR. WINGATE: Nothing further.

23 THE COURT: At this time the Defendant

1 will be remanded to the sheriff for execution of
2 sentence. We are in recess.

3 (WHEREUPON COURT ADJOURNED FOR THE DAY ON
4 OCTOBER 10, 2008, AT 10:04.)

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I, THE UNDERSIGNED, HEREBY CERTIFY

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THAT THE ABOVE AND FOREGOING IS A TRUE AND

9

COMPLETE TRANSCRIPT OF THE PROCEEDINGS HAD IN THE

10

SENTENCING HEARING OF THE ABOVE-ENTITLED CAUSE.

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Stacey L. McDevitt, RPR

18

Official Court

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Reporter

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